

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:05CR104
	§	
MATTHEW TOPPINGS (11)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 5, 2012, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Maureen Smith.

On March 3, 2006, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 51 months imprisonment followed by a 4 year term of supervised release for the offense of conspiracy to manufacture, distribute or possess with intent to manufacture, distribute or dispense methamphetamine. Defendant began his term of supervision on September 23, 2008.

On August 9, 2012, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 494). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance. Defendant shall submit to one drug test within 15 days of release from

imprisonment or placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; (4) Defendant shall notify the probation officer ten days prior to any change in residence or employment; (5) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer; and (6) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On March 12, 2012, Defendant submitted a urine specimen which tested positive for methamphetamine. On March 16, 2012, Defendant admitted to Senior U.S. Probation Officer Linda Werner verbally and in writing that he used methamphetamine the week of March 12, 2012; (2) Defendant failed to report to the U.S. Probation Office as instructed on June 4, 2012; (3) On September 28, 2011, Defendant changed jobs and failed to notify the probation officer at least ten days prior to any change in employment. On December 14, 2011, and January 23, 2012, Defendant reported he changed residences. He failed to notify the probation office at least ten days prior to any change in residence. On April 7, 2012, Defendant gained employment and failed to notify the probation officer at least ten days prior to any change in employment. Additionally, on or about June 5, 2012, Defendant changed jobs and failed to notify the probation officer at least ten days prior to any change in employment; (4) On January 25, 2012, Defendant was questioned by McKinney Police Department, McKinney, TX, when he was

issued a criminal trespassing warning. Defendant failed to notify the probation officer within seventy-two hours of being questioned by a law enforcement officer; and (5) On November 29, 2011, January 6, 20, 26, February 6, April 24, June 4, 12, 18, 22, 26, July 2, 6, 16, 24 and 27, 2012, Defendant failed to submit to drug testing as directed. On January 19, 26, March 13, and the months of June and July 2012. Defendant failed to attend substance abuse treatment at the Alterman Group, Plano, TX, as directed.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the September 5, 2012 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eight (8) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Beaumont, Texas, if appropriate.

SIGNED this 6th day of September, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE